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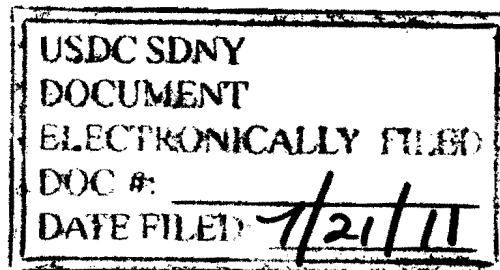
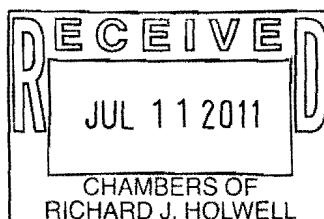
July 11, 2011

VIA FACSIMILE 212-805-7948

Honorable Richard J. Holwell
United States District Court
Southern District of New York
500 Pearl Street
New York, NY 10017

**Re: Microsoft Corporation v. DataTern, Inc.,
Civil Action No. 1:11-cv-02365-RJH (S.D.N.Y.)**

**SAP AG and SAP America, Inc. v. DataTern, Inc.
Civil Action No. 1:11-cv-02648-RJH (S.D.N.Y.)**



Dear Judge Holwell:

We write on behalf of plaintiffs Microsoft and SAP regarding the Court's July 1, 2011 Order (Dkt. 31) ("Order"), which consolidated the above actions for all purposes, to request that the Court permit the parties to brief the issue as to whether consolidation is appropriate for trial at a later date.

Plaintiffs submit that the actions should not be consolidated for trial at this juncture because, among other things, depending on how the evidence develops and the scope of the issues which remain after dispositive motions, a consolidated trial may confuse key issues, including non-infringement and damages. Thus, Plaintiffs request that, once the facts and issues have become more fully developed, the Court allow the parties to present further submissions regarding whether it is appropriate to hold a consolidated trial, or, alternatively, whether phased trials might be appropriate (e.g., a joint trial on the common issue of invalidity, followed by, if necessary, separate trials on the non-infringement and damages issues).¹


¹ To avoid burdening the Court with potentially unnecessary motion practice over an unripe issue, we respectfully request that the Court accept this letter in lieu of a formal motion under Local Rule 6.3. Of course, if the Court so desires, we will promptly file such a motion.

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We have discussed this matter with DataTern's counsel. The parties agree that the cases should be consolidated for pre-trial purposes. See Rule 26(f) statement at 7 (noting DataTern's position that the two cases "should have coordinated or consolidated proceedings for all pre-trial purposes"); Microsoft's June 13, 2011 letter at 2 (same). DataTern takes no position at this time as to whether it is appropriate to consolidate the actions for trial purposes, but agrees that it would be beneficial to defer determining this issue until a later date.

Accordingly, Microsoft and SAP respectfully request that the Court permit the parties to brief and/or argue the question of trial consolidation and/or phased trials at such time as the facts and triable issues are more fully developed.

Respectfully submitted,




Steven J. Rocci
Counsel for Microsoft Corporation, and SAP
AG and SAP America, Inc.

SJR/kaf

cc: Lee C. Bromberg, Esq. (counsel for DataTern, Inc.), via e-mail
Timothy J. Haller, Esq. (counsel for DataTern, Inc.), via e-mail
Danielle L. Rose, Esq. (counsel for Microsoft Corporation), via e-mail
Evangelos Michailidis, Esq. (counsel for SAP AG and SAP America, Inc.) via e-mail

The Court's order dated June 29, 2011, inter alia, consolidating these cases for all purposes is hereby amended so that these cases are consolidated for all pre-trial purposes only.

SO ORDERED

RICHARD J. HOLWELL
UNITED STATES DISTRICT JUDGE

7/19/11